Memorandum

COPY

To: File/CCACC

From: CMC

Date: September 6, 1990

Subject: CCACC III - Materials for Appeal

The following categories of material ready for appeal should assist in determining what case to take to court.

1. SOFT-CORE MAGAZINES

We have the following magazines ready for appeal:

a) Play Guy - year ____ volumes____;

b) Advocate Men - year ____ volumes ____;

c) Mandate - year ____ volumes ____.

These "soft core" magazines are censored of all reference to anal sex. Extensive photos are "playboy-type" poses, no couples, total nudity, the odd erection, no bondage. The stories in the magazines are adult, consensual, and non-violent. The reasons given for censorship are "anal sex" and "degradation". They clearly put the issue whether gay erotica, including anal sex, is to be treated on an equivalent basis as heterosexual erotica.

The potential difficulty with the magazines may be the very occasional inclusion of advertisements that are suggestive of youth sex. My opinion, and I hope I am not being optimistic, is that these are so minor that the magazines would be given the benefit of the doubt.

I believe the magazines will be declared not obscene. This is a core issue for the gay community seeking to establish that its sex activity is no more deserving of societal disapproval than heterosexual activity. The theme of the argument will be equality.

2. ORIENTAL GUY

Censorship of this decidedly soft-core magazine is supposedly based on "anal sex" and "degradation". The photos are less explicit by far than those in category one. However there are many ads for oriental companions to white American GWM which has overtones of imperialism (in the eyes of some) and youth exploitation - although this may itself be racist based on the stereotyping of orientals of youthful looks. This issue requires thought.

3. NOVELS

a) Coriolan, A Sand Fortress

b) Phil Andros, Greek Ways; Shuttlecock; Below the Belt and Roman Conquests.

These novels all contain extensive explicit scenes of consenting sexual activity of adult men including anal intercourse. It is all non-violent with a few very minor exceptions. Novels could not be characterized as anything other than erotic entertainment and would not be defended on any basis of artistic merit, unless correct spelling counts as an art. The sex is explicit but no more so than many heterosexual novels and magazines available, e.g. Penthouse Forum. They are very like the stories in the magazines in category one but have no photos. Perhaps the stories are a little rougher.

4. BOOKS WITH POSSIBLE MERIT OR REDEEMING PURPOSE

a) Mike Scherer, Great American Gay Porno Novel;

b) Mains, Joff, Urban Aboriginals: A Celebration of Leather Sexuality.

These books might be defended on the basis of their merit or redeeming purpose. Gay Porno Novel published by Gay Sunshine Press is a well-written (in my opinion) comic novel on gay pornography. It is about a porn novelist who has written on every conceivable fetish with numerous excerpts included. It is somewhat insightful on the issue of pornography and its purposes. Many of the scenes are totally and graphically grotesque but comic in their intent. Some have bondage, youth sex, "watersports". If you do not get the joke they will be thought degrading - sex with the Scout Master, sex with cripples, rape by invading barbarians. (I think it is a "good" pop book, but liberal straight friends had major doubts of this).

Urban Aboriginals is a serious book of advocacy with respect to leather sexuality. It contains passages of explicit erotic writing. It is possibly defensible as an exposition of a subject of public interest. Once the premise of S & M is admitted, the book would not seem irresponsible, but that is an unlikely assumption.

These two books seem like a borderline of winnable cases. My best opinion is that we would not be successful because they are too explicit on issues that a court would perceive as degrading. They are the kinds of books that required "expert" evidence about their "merits" to assist a judge who would otherwise be uncomfortable. They are books that "liberals" might feel comfortable to defend. If The Story of O is available, why should not these be as well?

These books go beyond the conservative version of the purpose of the proposed test case which is the tolerance of erotic anal sexuality. They would require a higher degree of tolerance of gay sex activity.

5. MORE EXPLICIT NOVELS

a) Entertainment For A Master, John Preston.

This book is S & M fantasy erotica that the average judge would probably regard as degrading because it deals with S & M. Acceptance would require a much more liberal standard for gay fantasy then straight. This would be a bad argument to make in a case otherwise based on the principle of equality.

b) First Hand

These series of collected essays of sexual experiences purports to be "real life". Each book inevitably contains numerous scenes that would be, and have been found to be, degrading in heterosexual activity, e.g. coming in someone's face, urination, etc. In my opinion, category B would be highly likely to be found to be obscene.

6. MEAT MEN COMICS

Each volume of Meat Men Comics contains some scenes of graphic exaggerated violence, bondage, etc. They would probably be found to be obscene.

The only arguments that might make a difference here would be that as comics they did not have as their dominant purpose the undue exploitation of sex. However, I believe this argument would be unsuccessful given the extremely graphic material.

Furthermore, it would present a potential hole in the obscenity laws whereby cartoons of rape fantasies, etc., might be thought to be not obscene.

It would probably require a more liberal test of tolerance for explicit drawings for gay as opposed to straight material. If that is ever possible, it is certainly inconsistent with the premise of equality which lies at the core of this case.

7. EROTIC OR DEGRADING

An emerging issue in obscenity litigation is the meaning of "degrading". See my commentary on R v. _____. The word is as value-laden and obviously will be perceived differently by gay and straight. Bondage and S & M would be a case in point, but also "watersports", "cum shots", etc.

I believe categories 1, 2, and 3 should serve to eliminate from the purview of "degrading" garden-variety anal sex. Whether bondage, S & M, etc., is always characterized as "degrading" will remain as a question for further litigation. In my opinion, this requires a higher tolerance for gay than straight material. Inequality should be left for another case.